rent receipts would undoubtedly have been made out in the name of Maynard & Co., Ltd. It is true that Peter Chong obtained the premises for the use of Maynard & Co., Ltd. but for some reason he kept the tenancy in his name. It was only on his death that the tenancy was transferred to Maynard & Co., Ltd. And this has been the accepted position all along, both in the previous trial before the High Court and in the appeal before the Federal Court of Malaysia. On the evidence before me I held that the plaintiff had granted the tenancy of the ground-floor to Peter Chong; that some months after the death of Peter Chong he granted the tenancy of the ground-floor to Maynard & Co., Ltd. and that in granting the tenancy to Maynard & Co., Ltd. the plaintiff had placed no restrictions on sub-letting. Maynard & Co., Ltd. were therefore not prohibited from sub-letting the ground-floor to the second defendants and the plaintiff is consequently not entitled to an order for possession against the second defendants.

In case I am wrong in my finding that there was a separate and distinct tenancy granted to Maynard & Co., Ltd. after the death of Peter Chong, I shall now deal with the question whether Lee Swee Hin, the representative of Peter Chong, had promised the plaintiff that on Peter Chong ceasing to run a dispensary on the ground-floor the premises would be returned to him. There was only one witness on either side who testified on this point and they were the plaintiff and Lee Swee Hin respectively who differed in their versions of the terms on which the ground-floor was let to Peter Chong. According to the plaintiff, Lee Swee Hin, the representative of Peter Chong, promised him that on the latter's ceasing to run a dispensary on the ground-floor the premises would be returned to him. Lee Swee Hin denied any such promise. It is therefore necessary to examine the evidence of these two witnesses in some detail in order to ascertain which of them is speaking the truth.

[*Having examined the evidence of the two witnesses, the learned judge concluded:*]

I considered very carefully all the evidence in this case and in particular compared the evidence of the plaintiff with that of Lee Swee Hin. It is true that Lee Swee Hin did speak an untruth in the course of his evidence, but having considered his evidence carefully and having tested it with the rest of the evidence in this case I found that his evidence apart from that one untruth, appeared to be reliable and in my opinion could be accepted as the truth of the matter. He was certainly a much more reliable witness than the plaintiff who on his own admission was not only capable but quite willing to tell a lie if it would help him in his claim. The plaintiff did not impress me at all as a truthful witness and in my opinion he was a totally unreliable witness. Under the circumstances, I accepted Lee Swee Hin's evidence that he never made the promise which the plaintiff alleged he did. The burden of proof on this issue was clearly on the plaintiff. It was for him to prove that such a promise had been made and as he had failed to do so I held that Maynard & Co., Ltd. were not prohibited by the terms of their sub-tenancy from sub-letting to the second defendants. The plaintiff was consequently not entitled to an order for possession against the second defendants and his claim was therefore dismissed with costs.

Claim dismissed.

Solicitors: *Hilborne & Co.; Donaldson & Burkinshaw.*

LIM v. NG

[O.C.J. (Buttrose J.) May 17, 1968]
[Singapore — Divorce No. 148 of 1966]

Family Law — Divorce — Petition for — Cruelty — Mental cruelty — Injury to health — Cumulative reprehensible conduct of respondent.

This was a wife's petition for divorce on the ground of her husband's mental cruelty. The petitioner was married to the respondent on April 23, 1960 and there was one child of the marriage. She alleged that the marriage had broken down because of the respondent's conduct and treatment of her and that she could not continue to reside with him as her health had been seriously undermined and impaired. The medical evidence was that her condition could be described as "moderately severe anxiety state" which if not checked could lead to a very serious condition resulting possibly in suicide. The reprehensible conduct of the despondent which the petitioner complained of were as follows:— (a) the respondent was a man of ungovernable temper who was offensive and used obscene and vulgar language; (b) the respondent continually insisted that he was physically and mentally a superior being to the petitioner; (c) the respondent ignored the petitioner at parties and social visits; (d) the respondent criticized her cooking; (e) the respondent did not give the petitioner sufficient pocket money and (f) the respondent was rough and crude in his marital relations with the petitioner.

Held: (1) there was injury to the petitioner's health and a reasonable apprehension of further serious injury to it;

(2) the combination of all the various factors, the cumulative reprehensible conduct of the respondent was sufficiently weighty that the petitioner ought not to be called on to endure it any further.

Cases referred to:—

(1) *Jamieson* v. *Jamieson* [1952] 1 All E.R. 875, H.L.

(2) *Gollins* v. *Gollins* [1963] 2 All E.R. 966, H.L.

(3) *Williams* v. *Williams* [1963] 2 All E.R. 994, H.L.

DIVORCE PETITION.

G. Starforth Hill for the petitioner.

S. K. Lee for the respondent.

Cur. Adv. Vult.

Buttrose J.: This is a wife's petition for divorce on the ground of her husband's cruelty. Legal cruelty may be defined as conduct of such a character as to have caused danger to life, limb or health (bodily or mental), or as to give rise to a reasonable apprehension of such danger. The cruelty of which complaint is made here is not physical but mental cruelty.

The petitioner, who was an adopted child, was married to the respondent on the 23rd April, 1960, and there is one child of the marriage, a girl Yolanda, who was born on the 9th December, 1964.

That the marriage has completely broken down is beyond doubt and I am satisfied that it has irretrievably come to an end.

The petitioner says that the marriage has broken down because of the respondent's conduct towards and treatment of her and she cannot continue to reside under the same roof with him any longer and that her health has been seriously undermined and impaired.

The medical evidence, which I accept, is that at the time the petitioner left the respondent her condition was what I think can fairly be described as a moderately severe anxiety state which if not checked and the cause removed could lead to a very serious condition ultimately resulting possibly in suicide.

The opinion of the two doctors called on behalf of the petitioner was that this anxiety state from which she was suffering was precipitated by her husband's conduct and behaviour and a marital situation which was beyond reconciliation.

The medical evidence was attacked by the respondent on the ground that it did not support the petitioner's case because it was coloured and tainted and that the matter was highly in doubt. Dr. Stephens was a completely disinterested witness who was merely performing his professional duties in the correct and proper manner. That Professor Ransome was ill-advised and misguided in his attempts to mediate in these proceedings, nobody can deny. It was for this reason, among others, that I took upon myself the somewhat unusual course of having Professor Ransome recalled in order that I could satisfy myself as to the purpose of his somewhat curious machinations in connection with this case.

As a result I am quite satisfied as to his genuineness and honesty of purpose in doing what he did, regrettable though I consider it was in the circumstances of this case, and his professional opinion and evidence is in no way tainted or coloured thereby.

Dr. Wong Yip Chong called by the respondent to criticize the evidence of Dr. Stephens and Professor Ransome never saw or spoke to the petitioner nor did he hear or see her giving evidence in the witness box. I was indebted to him for a lucid and informative dissertation on the doctor patient relationship and other matters but his evidence was of little real value in determining the issues in this case. He did however say that if the symptoms as recorded by Dr. Stephens and confirmed by Professor Ransome were genuine and correct he considered that both of them were probably right in coming to the conclusion that it was an exogenous depression — an anxiety state. Dr. Stephens and Professor Ransome were fully alive to the necessity of distinguishing between the malingerer and the genuine patient and Dr. Stephens further said that the petitioner did not overplay her hand when he examined her and there was a reasonable and coherent pattern about her statements.

I find as a fact that there was injury to the petitioner's health and a reasonable apprehension of further serious injury to it.

In the light of that finding of fact I have now to determine whether the sum total of the reprehensible conduct of the respondent as alleged by the petitioner was cruel. That depends on whether the cumulative conduct was sufficiently weighty to say that from a reasonable person's point of view, after a consideration of any explanation or excuse which this respondent might have in the circumstances, the conduct is such that this petitioner ought not to be called on to endure it. As Lord Normand said in *Jamieson* v. *Jamieson* [1] at page 878:—

> "What on paper may seem little more than a series of pin pricks may present a very different aspect when it has been developed in evidence".

The quality of every piece of conduct is affected by its context and by that which precedes and follows it.

The reprehensible conduct of which the petitioner complains may be summarised briefly as follows.

The marriage did not turn out to be a happy one virtually right from the start and frequent quarrels broke out between them and they had nothing in common. The respondent was a man of ungovernable temper who would flare up for no reason at all. He was offensive and used obscene and vulgar language to her. She did not complain to her parents because she was too ashamed to do so. The respondent threatened that he would give her hell if she did so.

He often asked her if she wanted a divorce she had better think about it and if she wanted one he would give it to her. The respondent continually insisted that he was physically and mentally a superior being to her and that she must never stand up to him but must give way all the time. It was the petitioner who had to do the patching up after these scenes and

frequently for days afterwards when she endeavoured to speak to him he would ignore her.

At parties and on social visits the respondent ignored her and would go off to talk with his friends. On returning home he would become angry and ask her why she had sat there looking like a fool, so dumb and stupid. When going to the cinema he would stalk on ahead leaving her to wander along behind him and telling her if she walked so slowly she must walk by herself.

The respondent criticized her cooking saying that even a servant could do better. She drove the respondent to work every day and on arrival he would get out and slam the door without a word of thanks or even good-bye. The respondent never gave her enough pocket money and she was forced to go to work to obtain some and even after the birth of the baby.

With regard to their marital relations the respondent was rough and crude and would force himself upon her when she was about to fall asleep and very tired. If she ignored his advances he became very angry and said:—

"You think yourself so wonderful, if I want it and can't get it from you, I will go to a prostitute".

The arrival of the child Yolanda brought no change in the respondent's conduct except that he was very happy over the baby and said to the petitioner that now they had Yolanda she would always come first. He even criticized his wife's bringing up of Yolanda. His gospel apparently was discipline with love. He resented his wife giving Yolanda a spanking on one occasion when he saw four red weals on her thigh. He resented her spending her own money. Then there was the incident of the $200 cheque which the respondent was reluctant to give her and delayed doing so which was apparently the last straw which broke the camel's back.

In short the petitioner could do nothing right and finally as she could endure his conduct no longer and her health was breaking down she left him and sought refuge in the home of her parents.

I may say at once that I accept substantially the petitioner's version of their life together in preference to that of the respondent's. Indeed, the respondent's evidence goes some way towards supporting and confirming some of the petitioner's allegations.

He admitted that he had probably contributed to the unhappy state of affairs between them; that he should have been more understanding of her character; that he should have made modifications in his own character; that he should have lived more in the present and not planned for the future; that perhaps he had been too careful about money. I consider these to be gross under statements of the real position.

He admitted using the obscene and vulgar language attributed to him by the petitioner but says that some of them were used intimately in the bedroom as a prelude to intercourse. Dr. Wong has told us that the use of vulgar words within the intimacy of a husband and wife relationship can be part of the physical mutually stimulating aspect of the sexual act. Be that as it may, it cannot, in my view, apply, when the words are used in the context of a rebuff or a refusal to perform the sexual act. The other vulgar and offensive expressions the respondent admitted using were, he maintained, not directed at the petitioner but merely exclamations denoting, one can only assume, temper or annoyance.

The respondent admitted saying to his wife that now Yolanda is here she comes first and that he meant it and then went on to say that what was in his mind was that as they had tried to have a baby for four years and at last succeeded her welfare should be of the first importance.

He also admitted the incident concerning the $200 cheque but not the petitioner's entire version of it.

The respondent maintained that he was not guilty of cruelty, but if he was guilty of any of the acts alleged against him, which he denied, then he claimed that the petitioner had unreasonably provoked him or alternatively that she was suffering under the unwarranted impression of a persecuted person being an adopted child. He further asserted that any differences which had arisen between himself and his wife after the marriage had been wilfully advised and instigated by the petitioner's relations especially her mother and friends. The respondent denied that he was responsible for the ill-health of the petitioner and contended that it was due solely to her own short-comings and her inability to re-adjust herself to a normal married life.

There is no substance, in my view, in any of these allegations.

As the marriage developed the respondent, in my opinion, became more and more obsessed with a sense of his own importance and completely engrossed with advancing his interests in the business world with the object of making money to the exclusion of everything else including his wife.

On his own admission business came first, Yolanda came first and, in the view I have formed of the evidence, he came first. He lived entirely in the future and the ordinary day-to-day business of a married existence passed him by.

What is no doubt but the veriest pin prick but which affords a typical example of the respondent's attitude of superiority and selfishness was his practice, according to the petitioner, of walking on ahead of her on their visits to the

cinema. He always had to be in the lead and in a hurry to get on with what I can only term a callous disregard and indifference to the feelings and wishes of others.

The medical evidence that after she left her husband she gradually improved and in September 1967 just before the trial commenced not quite a year later she was then physically better and more calm. She had benefitted by the separation. She herself said she was feeling much better and could now think for herself and all the pains, giddiness and cough had completely disappeared.

This evidence supports the view that the cause of her ill-health was her husband's behaviour and conduct resulting as the doctors say in an anxiety state and a marital situation which was beyond reconciliation. Once the cause was removed by her leaving him the petitioner began to recover.

I have arrived at the conclusion that the combination of all these various factors, the cumulative reprehensible conduct of the respondent is sufficiently weighty to enable me to say that this petitioner ought not to be called on to endure it.

No case of this sort would be complete without a reference to *Gollins* v. *Gollins* [2] — the case of the lay-about husband — and *Williams* v. *Williams* [3] of the same report — the case of the insane husband. An intention on the part of one spouse to injure the other is not now a necessary element of cruelty as a matrimonial offence though the presence of such an intention, if it exists, is material and may be crucial. As one author in dealing with these two cases described it — it is now cruelty without culpability or divorce without fault. In the light of Professor Ransome's evidence that he did not think the respondent realised what he was doing to the petitioner these decisions are of importance.

The present case, in my view, falls squarely within the principles enunciated in *Gollins'* case, *supra*, and the respondent has, in my judgment, been guilty of the matrimonial offence of cruelty.

Before I part with this case, there is one further thing which must not be left unsaid and it is this.

Throughout these proceedings the respondent has taken the opportunity whenever it presented itself of making a bitter and personal attack on the petitioner's parents Mr. and Mrs. Lim Khoon Teck.

Indeed the only time he appeared to show any animation in the witness box was when he was levelling accusations at them. He claimed that both of them deliberately and wilfully set about wrecking his marriage with their daughter. Mrs. Lim Khoon Teck was the prime culprit in this campaign while Mr. Lim Khoon Teck set about hounding him out of the firm of Lee & Co. in which he was partner.

He maintained that the petitioner's allegations against him were a pure fabrication as the result of a conspiracy between her and her mother to rig the evidence for the purposes of getting a divorce. Finally he rounded off these allegations by insisting that Mrs. Lim Khoon Teck had made life hell for him.

Not only, in my view, has the respondent failed to establish his accusations but they are completely without foundation. On his own evidence Mr. and Mrs. Lim Khoon Teck only started to interfere with his marriage after the 8th September, 1966 on which date, according to the petitioner, the marriage had for all practical purposes come to an end. So, far from trying to upset the marriage Mrs. Lim Khoon Teck was responsible for the petitioner returning to the matrimonial home and it was not until the 18th October, 1966 that she finally allowed her daughter to seek the haven of her own home and gave her the succour and support of which she appeared so much in need.

Then there was the wanton and cruel accusation that Mr. and Mrs. Lim Khoon Teck's son committed suicide in the U.K. because Mrs. Lim Khoon Teck refused to let him marry the girl of his choice which was as baseless as it was false. The accusation was made without the slightest justification for it. The respondent said he heard about it as the result of a little idle gossip from someone whom he now cannot remember and without more ado it was put to the petitioner that that was the position. Mrs. Lim Khoon Teck told us the reason for her son's suicide was because he was suffering from cancer. The only reason that I am able to attribute to this grossly improper question is that it was introduced as a piece of pure prejudice and to wound and hurt Mr. and Mrs. Lim Khoon Teck. Then there was the novel and unusual situation of the respondent calling the petitioner's father and mother as his witnesses. He served subpoenas on them to ensure their attendance and to be able to get them into the witness box should they not be called by the petitioner.

I am unable to escape the conclusion that the respondent was determined to drag his parents-in-law through the mire and squalor of these divorce proceedings regardless of the consequences.

Similarly with the regard to the introduction of Yolanda into these proceedings by having her produced in court on the flimsy excuse and complete farce of having her identified by her mother. I consider this again an act of wanton cruelty and nothing more than a desire to taunt and hurt.

The only effect which it produced was to cause the petitioner to burst into tears where-

upon the child was promptly removed and not seen again. I was told there was a reason for this, in my view, utterly unnecessary and inexcusable incident but to this day no reason has yet been advanced.

In the result for the reasons I have given I am satisfied that the contents of the petition have been sufficiently proved. I pronounce a decree nisi for the dissolution of the marriage. I condemn the respondent in the costs of the suit, such costs to be on the higher scale. I direct that this decree nisi shall not be made absolute for a period of three months from the date hereof.

Decree nisi.

Solicitors: *Rodyk & Davidson*; *S. K. Lee & Co.*

RE L.Y. SWEE & CO. LTD.; KHOO LEONG KEE v. L.Y. SWEE & CO. LTD.

[O.C.J. (Raja Azlan Shah J.) May 28, 1968]
[K.L. — Originating Motion No. 2 of 1968]

Companies — Motion for rectification of register of company — Applicant personal representative of deceased shareholder — Application resisted on ground that company had lien over deceased's shares — Whether applicant entitled to "clean" certificate — Interpretation of memorandum and articles of company — Companies Act 1965, ss. 103, 162 and 163.

Practice and Procedure — Costs — Solicitor for company improperly appointed — Costs to be paid by directors — Companies Act, 1965, s. 139(5).

This was an application to rectify the register pursuant to section 162 of the Companies Act by striking out the name of one *L* deceased as holder of 1,400 shares in the respondent company and inserting in lieu thereof the name of the applicant.

The deceased died sometime in 1963 and until his death was the chairman of the board of directors of the respondent company. The applicant (the widow of the deceased) was the sole surviving executor and trustee of the estate of the deceased. The other directors were the applicant and two nephews of the applicant. In December 1967 the applicant applied to have her name registered against the shares standing in the name of the deceased. On this being refused she wrote through her solicitor to the respondent company forwarding the grant of probate and a draft resolution signed by the applicant for signature by the directors. The grant of probate and the draft resolution was returned unsigned. In January 1968 the applicant was served with a writ (Suit No. 21 of 1968) alleging that a sum of $93 898.94 was due and owing by the estate of the deceased to the respondent company. The applicant then made the present application to rectify the register.

Held: (1) where a shareholder in a company dies and the transmission clause in its articles of association is in the form of clause 39 the personal representative is entitled to be registered in respect of and to have a certificate of the shares and the company has no right to enter in the register of members or in the certificate any statement as to the company's claim under its articles to a lien on the shares for the liability of the deceased to the company;

(2) as the claim to the lien in Suit No. 21 of 1968 was altogether denied and the action was being resisted, the applicant was entitled to a "clean" certificate like that possessed by the person from whom she derived her title;

(3) article 39 of the articles of association of the company enabled personal representative to be registered as a member in respect of the deceased's shares. It did not stipulate that the personal representative must apply to be registered in a representative capacity;

(4) the register therefore ought to be rectified in terms of the motion and the directors must bear the costs of this application.

An application to question the authority of counsel to act for a company may be made at any stage in the proceedings, even at the conclusion of the trial.

Cases referred to:—

(1) *Moodie* v. *W. & J. Shepherd Ltd.* [1949] 2 All E.R. 1044.

(2) *Scott* v. *Frank F. Scott (London) Ltd.* [1940] 3 All E.R. 508.

(3) *Danish Mercantile Co. & Ors.* v. *Beaumont & Ors.* [1951] 1 All E.R. 95.

(4) *Russian &c. Bank* v. *Comptoir de Mulhouse* [1925] A.C. 112.

(5) *Simmons* v. *Liberal Opinion Ltd.* [1911] 1 K.B. 966.

ORIGINATING MOTION.

J. J. Puthucheary and *S. D. K. Pedlie* for the applicant.

R. Talalla for the respondents.

Cur. Adv. Vult.

Raja Azlan Shah J.: This is an application for an order to rectify the register pursuant to the provisions of section 162 of the Companies Act, 1965, by striking out the name of Law Joo Jin, deceased, as holder of 1,400 shares in the respondent company standing at the moment in the name of the said deceased and by inserting in lieu thereof the name of the applicant as the holder of the said shares and other consequential reliefs.

A brief narration of the facts which have led to this unfortunate litigation will explain the position of the parties. The respondent company is a private company incorporated under the Companies Enactment, of which Law Joo Jin, deceased, was the governor and chairman of the board of directors until his death on January 30, 1963. He left a trust disposition and settlement dated November 13, 1959 of which the applicant (widow of deceased) is the sole surviving trustee and executrix nominated therein and acting thereunder. The surviving directors are the present applicant, and the deceased's nephews Law Joo Hone and Law Joo Kuen. At the time of his death the deceased owned 1,400 shares of $100 each in the said company which is 91 per cent of the whole share capital. The applicant holds 20 such shares in her own right.

On January 18, 1968 the applicant was served with a writ alleging that a sum of $93,898.94 is due and owing to the respondent company by the estate of the deceased (*vide* Kuala Lumpur Civil Suit No. 21 of 1968).